APPENDIX

I. Opinions of the Courts Below
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   - B. Wa Ct of Appeals dtd 4/9/79
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   - D. 9th Cir Order dtd 12/14/83
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   - B. Portion of Nat'l Historic Preservation Act of 1966(16 USC 470)
   - C. Portion of Seattle Dept of Community Development Memorandum dtd Aug 5, 1976 which appears as CR 10 Exhibit A in Excerpt of Record to 9th Cir in(IF)above

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

FRANK KUSTINA, Plaintiff,	)	NO. 833 228
vs.	)	JUDGMENT OF DISMISSAL UNDER CR 12(b) and CR 56(b)
HISTORIC SEATTLE PRESERVATION AND DEVELOPMENT AUTHORITY, a public corporation; THE CITY OF SEATTLE, a municipal corporation; (et al omitted) Defendants.	)	

This matter having come on regularly for hearing before the undersigned Judge of the above-entitled court upon the motions of defendants for judgment dismissing plaintiff's complaint with prejudice pursuant to CR 12(b) and CR 56(b); the court having reviewed the pleadings, motions, affidavits, memoranda and other documents on file herein and having heard argument from counsel and from plaintiff, and it appearing to the court

that plaintiff's complaint fails to set forth any claim upon which relief could be granted, that there is no genuine issue of material fact and that defendants' motions should be granted for the reason that plaintiff's action was brought beyond the 20 day time required by law, and is at any rate barred by principles of estoppel and laches, for the reason that plaintiff has not alleged, identified or sustained any legal injury, is not aggrieved and lacks standing, and for the reason that the uncontroverted affidavits on file herein establish that plaintiff's claims predicated upon Seattle Ordinance 105462 are without merit as a matter of law and are at any rate moot; Now, Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff's complaint is dismissed with prejudice and with costs to defendants.

DONE IN OPEN COURT this 14th day of June, 1978.

/s/
JUDGE

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

FRANK KUSTURA, Appellant,	)	
	)	NO. 6698-I
v.	)	DIVISION ONE
HISTORIC SEATTLE PRESERVATION AND DEVELOPMENT AUTHORITY, a public corporation; THE CITY OF SEATTLE, a municipal corporation; (et al omitted) Respondents.	)	FILED: APR 9 1979

DORE, FRED, J. -- Plaintiff alleged that he was the owner of property in Ballard, and he brought this action against the Ballard Avenue Landmark District demanding the removal of two small historic residential houses that Historic Seattle Preservation and Development Authority (Historic Seattle) had acquired, renovated and moved to their present location in Ballard. Along with Historic Seattle, plaintiff's complaint named as defendants the City of

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Seattle, the former director of Seattle's Department of Community Development, the acting director of that department, the Superintendent of Buildings for the City of Seattle, all members of the Seattle City Council, and Seattle's former mayor. The court granted the defendants' motion for summary judgment of dismissal. Plaintiff appeals.

ISSUES

1. Did the trial court err in holding that plaintiff had no standing to challenge the administrative actions of Historic Seattle Preservation and Development Authority?

2. Did the court err in holding that plaintiff's petition for writ of certiorari was untimely?

3. Did the trial court err in holding that plaintiff's complaint, coupled with the uncontroverted affidavits before

the court, failed to set forth a viable claim upon which relief could be granted?

STATEMENT OF FACTS

Historic Seattle is a public authority chartered by the City of Seattle, pursuant to RCW 35.21.725 and Seattle City Ordinance 103387. Historic Seattle's charter states that the public authority's purpose is to preserve and enhance the historic heritage of the City of Seattle for the mutual pride and enjoyment of Seattle's citizens and for the creation of a more livable environment within the historic areas of the city.

On October 15, 1976, the Ballard Avenue Landmark District (Seattle Ordinance 105462) was created to preserve, protect, enhance, and perpetuate those elements of the district's cultural, social, economic, architectural, historic or other heritage. The ordinance

prohibited certain changes in the buildings, structures and other visible property therein without a certificate of approval. The ordinance further established a board consisting of 5-7 members to be elected, which would administer and enforce the ordinance. Upon application for a certificate of approval, the ordinance provided that the board act to review the application and grant or deny the same within 30 days. If the board failed to act within the 30-day limit, the application would be deemed approved and the director of the Department of Community Development would thereafter issue a certificate of approval.

In May of 1976, Historic Seattle acquired two of Seattle's oldest residential houses, the "Pioneer Houses." The Pioneer Houses were in danger of

of being demolished as the result of commercial development in Seattle's International District, and Historic Seattle acquired the houses for the purpose of relocating and renovating them in order to preserve an important part of Seattle's heritage.

Earl Layman of Historic Seattle stated in his affidavit in reference to the two Pioneer Houses as follows:

> The (pioneer) houses are among the oldest structures still existing in the city. Modest single-family structures of this type once existed in considerable numbers along Ballard Avenue in what is now the Landmark District . . . (The pioneer houses) preserve and enhance the District's cultural, historic and architectural heritage by providing a unique example of a type of structure that once was common on Ballard Avenue.

Historic Seattle thereafter sought to relocate the houses to the Ballard Avenue Landmark District, created in April of 1976, pursuant to Ordinance 105462.

On May 26, 1976, pursuant to Ordinance 105462, Historic Seattle applied for a certificate of approval of Historic Seattle's proposal to relocate the Pioneer Houses to the Ballard Avenue Landmark District. At that time the Ballard Avenue Landmark District Board created by Ordinance 105462 had not yet been elected. That board's members were not elected until July of 1976.

Section 5(d) of Ordinance 105462 requires that the director of Seattle's Department of Community Development unilaterally act upon an application for a certificate of approval if the Ballard Avenue Landmark District Board does not act upon that application within 30 days from the date the application is submitted. Because the Ballard Avenue Landmark District Board did not act, and could not have acted, upon Historic Seattle's

application for a certificate of approval within 30 days from Historic Seattle's submission of that application, the director of Seattle's Department of Community Development, acting under the requirements of the ordinance, issued Historic Seattle a certificate of approval on June 3, 1976. In August of 1976, the City of Seattle issued a building permit to Historic Seattle pursuant to Historic Seattle's July 21, 1976 application for such a building permit to allow the relocation of the Pioneer Houses to the Ballard Avenue Landmark District. Historic Seattle moved the Pioneer Houses to the Ballard Avenue Landmark District on September 27, 1976.

Although Historic Seattle's plan to relocate the Pioneer Houses had been amply publicized in various Ballard

publications prior to September 27, 1976, and even though the plaintiff was well aware of the relocation plans well before the relocation of the Pioneer Houses, he took no action whatsoever to contest Historic Seattle's relocation of the houses until August of 1977, almost one year after the Pioneer Houses had actually been relocated in Ballard. As soon as the Ballard Avenue Landmark District Board had elected and appointed the various members of their board, the composition of which was completed after Historic Seattle had received its building permit to relocate the Pioneer Houses, the board endorsed the relocation of the houses before they were actually moved to their present Ballard site.

Plaintiff admits that he learned of Historic Seattle's plan to relocate the Pioneer Houses to the Ballard Avenue

Landmark District on June 14, 1976, and he also attended a public hearing on such proposal on July 27, 1976, which hearing was held to afford Ballard residents an opportunity to comment upon Historic Seattle's plan to relocate the Pioneer Houses.

DECISION

ISSUE 1: Plaintiff lacked standing to bring this action.

Since Ordinance 105462 does not authorize appellant's present action, such action is necessarily one pursuant to RCW 7.16.040 for a writ of certiorari to review both the issuance of a certificate of approval by the director of Seattle's Department of Community Development and the issuance of a building permit by Seattle's Superintendent of Buildings.

However, an action for a writ of certiorari may only be maintained by one

claiming to be "aggrieved" by administrative or judicial action. Jones v. Jones, 68 Wn. 2d 413, 415, 413 P. 2d 338(1966). The courts have consistently held that in order to be "aggrieved" for purposes of standing to challenge administrative actions, a plaintiff "must allege and prove that he has suffered some special damages not common to other property owners similarly situated." See Unger v. Forest Homes T.P., 237 N.W. 2d 582, 584(Mich. App. 1975), where the court held that plaintiff lacked standing to challenge an amendment to a municipality's zoning ordinance because the plaintiff had failed to establish that he had "suffered a special damage by reason of the change in the use or zoning--different from that suffered by the general public." See also Whitney Theater Co. v. Zoning Board of Appeals,

189 A. 2d 396, 399(Conn. 1963), where the court held that a plaintiff in an action to review the decision of a municipal zoning board "had the burden of proving that it was aggrieved" which "required the plaintiff to establish that it was specially and injuriously affected in its property rights or other legal rights."

In the present case, appellant has alleged no such special damage resulting to him from Seattle's actions that permitted Historic Seattle to relocate the Pioneer Houses from Seattle's International District to Ballard. Appellant has alleged only that he is the owner of property in Ballard, and such an allegation is insufficient to afford appellant standing.

Consequently the lower court properly held that plaintiff had no standing to

challenge the certificate of approval and building permit issued to Historic Seattle for the relocation of the Pioneer Houses.

ISSUE 2: Appeal untimely.

The trial court's ruling must be affirmed for the additional reason that the plaintiff's appeal was not timely. Petitions for writs of certiorari to review administrative actions must be filed within 20 days from the contested administrative action just as appeals to Superior Court from decisions of courts of limited jurisdiction must be filed within 20 days.

In the present case, no statute or ordinance gave appellant the right to challenge the administrative actions at issue here. Appellant's complaint is necessarily one seeking a writ of certiorari to review administrative

actions. Because appellant's complaint was brought one year from the administrative actions of which he complains, and not within 20 days, the lower court properly dismissed that complaint pursuant to Vance v. Seattle, 18 Wn. App. 418, 569 P. 2d 1194(1977). Moreover, even if Ordinance 105462 had authorized appellant's appeal, which it does not, that ordinance requires that such appeals be taken within 20 days. Thus, whether appellant's action is one for a writ of certiorari or one taken pursuant to Seattle City Ordinance 105462, the lower court properly ruled that appellant's action was time-barred.

ISSUE 3: Plaintiff's cause of action moot.

Even assuming the validity of plaintiff's claim, such claims are entirely moot. It is undisputed that

that once the board's elections were held and the board became operational, and reviewed the project in question, they unanimously endorsed it and approved the issuance of the certificate of approval. Such ratification cured any defect in the prior decision. Owings v. Olympia, 88 Wash. 289, 152 P. 1019(1915).

Affirmed.

/s/_____
Dore, Fred J.

WE CONCUR:

/s/_____
Faris, J.

/s/_____
Swanson, J.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

FRANK KUSTINA, Plaintiff,	)	No. C80-529V
vs.	)	ORDER ON MOTION TO DISMISS
THE CITY OF SEATTLE and THE HISTORIC SEATTLE PRESERVATION BOARD AND DEVELOPMENT AUTHORITY, Defendants.	)	

Having considered the motion of defendants to dismiss, together with the memoranda and affidavits submitted by counsel, the Court now finds and rules as follows:

1. Although styled a motion to dismiss for failure to state a claim upon which relief can be granted, defendants' motion is actually one for summary judgment of dismissal. Both parties have treated the motion as one for summary judgment by submitting affidavits and documents outside the

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record in support of their positions. The Court will therefore treat the motion as being one for summary judgment.

2. With respect to plaintiff's first eleven causes of action, it is clear that prior state court proceedings bar the assertion of those claims in this Court. Title 28 U.S.C. sec. 1738; Scoggin v. Schrunk, 522 F. 2d 436(9th Cir. 1975), cert. denied, 423 U.S. 1066 (1976); Bennun v. Board of Governors, 413 F. Supp. 1274(D.N.J. 1976); Seattle-First National Bank v. Kawachi, 91 Wn. 2d 223, 588 P. 2d 725(1978). Society has a substantial interest in the finality of litigation. Once a matter has been litigated, it is wasteful of both public and private resources to re-litigate the same matter. If plaintiff desired to have a federal court rule on his claims, he should have sought certiorari before

the United States Supreme Court. In any event, the Court has reviewed the prior rulings of the state courts and is in agreement with those rulings.

3. None of the remaining claims implicate the Historic Seattle Preservation and Development Authority in any way. To the extent that those claims attempt to impose liability upon the Authority, they do not state a claim upon which relief can be granted.

Accordingly, the motion of defendants is GRANTED in part and DENIED in part. The Historic Seattle Preservation Board and Development Authority is dismissed as a party defendant. The first eleven claims against defendant City of Seattle are DISMISSED WITH PREJUDICE.

The Clerk of this Court is instructed to send uncertified copies of this

order to all counsel of record.

The Clerk shall prepare a judgment of dismissal with prejudice with respect to defendant Authority.

DATED this 11th day of August, 1980.

/s/
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK KUSTINA, Plaintiff-Appellant,	) No. 82-3603
vs.	) D.C. NO. CV 80-529 JCT
CITY OF SEATTLE, Defendant-Appellee.	) MEMORANDUM

Appeal for the United States District Court for the Western District of Washington (Seattle)
Honorable John C. Coughenour, Presiding

Argued and Submitted November 9, 1983

Before: SNEED, NELSON, and REINHARDT, Circuit Judges

Plaintiff Frank Kustina filed an action against the City of Seattle under 42 U.S.C. sec. 1983(Supp. V 1981) and under Washington state law. The district court held that the doctrine of res judicata precluded litigation of twelve of the fifteen claims. In addition, the district court dismissed another cause of action for failure to state a claim

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upon which relief can be granted and granted summary judgment for the City of Seattle on the merits of two state law claims. We affirm in part and reverse in part.

RES JUDICATA

When a section 1983 action is based on the same wrong that was the subject of a state court action between the same parties and the preclusion rules of the state in question would bar litigation of those issues the doctrine of res judicata precludes a federal court from deciding whether other legal theories would allow for recovery. See Allen v. McCurry, 449 U.S. 90, 96 (1980); Heath v. Cleary, 708 F. 2d 1376, 1379 (9th Cir. 1983); Miofsky v. Superior Court, 703 F 2d 332, 336 (9th Cir. 1983); Scoggin v. Schrunk, 522 F. 2d 436, 437 (9th Cir.), cert. denied, 423 U.S. 1066(1976); see

also 28 U.S.C. sec. 1738(1976)(requiring federal courts to give full faith and credit to state court judgments). In short,

> where the federal constitutional claim is based on the same asserted wrong as was the subject of the state action, and where the parties are the same, res judicata will bar the federal constitutional claim whether it was asserted in state court or not, for the reason that the state judgment on the merits serves not only to bar every claim that was raised in the state court but also to preclude the assertion of every legal theory or ground for recovery that might have been raised in support of the granting of the desired relief.

Scoggin, 522 F. 2d at 437 (emphasis added). 1/

Under Washington law, all possible challenges to a common nucleus of operative facts are treated as if they had been decided in a final judgment whether or not the theories actually were raised in the proceedings. See Seattle-First National Bank v. Kawachi, 91 Wash. 2d

223, 226-28, 588 P. 2d 725, 728(1978); Sanwick v. Puget Sound Title Insurance Co., 70 Wash. 2d 438, 441-42, 423 P. 2d 624, 627 (1967). Here, the plaintiff originally brought an action against the City of Seattle in state court challenging the placement of two houses in a district zoned for landmarks and the Seattle ordinance creating that district, on federal and state law grounds. Claims one through eleven and fifteen of the complaint filed in federal court challenge the same conduct of the same defendant and the same ordinance. Therefore, even if the state court "judgment may have been wrong or rested on a legal principle subsequently overruled in another case," the doctrine of res judicata bars litigation of these issues once again. Federated Department Stores, Inc. v. Moitie, 452 U.S. 394, 398

(1981)(citations omitted).2/ We therefore affirm the district court's holding that that the doctrine of res judicata precludes litigation of claims one through eleven and fifteen.

FAILURE TO STATE A CLAIM

The plaintiff's twelfth claim is that the improper use of public funds jeopardized the future receipt of federal funds within the landmark district and violated state and federal law. The speculative allegation indicates only a general concern shared by other property owners within the district, rather than any threatened or actual individual injury. Because a generalized grievance brought by a taxpayer and shared by a large class of citizens does not alone warrant the exercise of federal jurisdiction, and because the plaintiff failed to plead any individual injury, the assertion of federal jurisdiction over the twelfth

claim would have been improper. See Warth v. Seldin, 422 U.S. 490, 499(1975). To the extent that the twelfth claim raised state law issues, those parts of the claim should have been dismissed without prejudice after dismissal of the federal claims. See pp. ___ infra. Accordingly, we hold that the district court properly dismissed the claim.

STATE LAW CLAIMS

The district court exercised pendent jurisdiction over the state issues raised in claims thirteen and fourteen. In cases in which a federal court exercises pendent jurisdiction over state claims, "if the federal claims are dismissed before trial . . . the state claims should be dismissed as well." United Mine Workers v. Gibbs, 383 U.S. 715, 726(1966)(emphasis added). Here, the district court, rather than granting summary judgment on the merits, should

have dismissed without prejudice the complex state law claims after the federal claims were dismissed. See Brandwein v. California Board of Osteopathic Examiners, 708 F. 2d 1466, 1475 (9th Cir. 1983)(citing United Mine Workers v. Gibbs); Townsend v. Columbia Operations, 667 F. 2d 844, 850 (9th Cir. 1982). We therefore reverse the district court's summary judgment on the state law issues raised in claims thirteen and fourteen and remand the case with instructions to dismiss the claims without prejudice.

AFFIRMED IN PART, REVERSED IN PART

FOOTNOTES

1/ In deciding whether the doctrine of res judicata precludes litigation of a claim, a federal court generally would consider

> (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same

> evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts.

Harris v. Jacobs, 621 F. 2d 341, 343 (9th Cir. 1980) (citation omitted); see Rutledge v. Arizona Board of Regents, 660 F. 2d 1345, 1351 (9th Cir. 1981); Gallegher v. Frye, 631 F. 2d 127, 128-29 (9th Cir. 1980).

2/ The plaintiff alleges that res judicata should not bar litigation of his claims because the defendants perpetrated fraud upon the state courts. We previously have reserved the question whether there is a fraud exception to the doctrine of res judicata. See Costantini v. Trans World Airlines, 681 F.2d 1199, 1202 (9th Cir.), cert. denied, 103 S. Ct. 570 (1982). However, we have emphasized that, even if such an exception exists, a party must allege fraud with particularity. 681 F. 2d at 1202-03. We hold that the plaintiff's conclusory allegations of fraud are insufficient to fall within a proposed exception to the doctrine of res judicata.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FRANK KUSTINA, Plaintiff,	)	NO. C86-99R
v.	)	ORDER GRANTING DEFENDANT'S MOTION TO DISMISS
THE CITY OF SEATTLE, Defendant.	)	

THIS MATTER comes before the court on motions by plaintiff for declaratory judgments to set aside judgment for want of jurisdiction and for fraud upon the court, and on a motion by defendant to dismiss plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(6) for lack of jurisdiction and failure to state a claim upon which relief can be granted. Having reviewed the memoranda, exhibits and affidavits submitted in support of and in opposition to these motions, and being fully advised, the court finds and rules as follows:

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Plaintiff's complaint purports to set forth nine claims for relief. For the reasons set forth below, the court concludes that defendant's motion to dismiss should be granted and plaintiff's complaint dismissed in its entirety.

1. Plaintiff's first claim concerns the bell which was at one time mounted in the tower of the former Ballard City Hall and which plaintiff seeks to have returned from its present location on the grounds of the United States Government Locks in Ballard to its historic site within the Ballard Avenue Landmark District. Plaintiff contends that this court can exercise subject matter jurisdiction over this cause of action pursuant to the National Historic Preservation Act, 16 U.S.C. sec. 470, and because the bell is currently on federal property. The court finds these bases insufficient:

the location of the bell in itself is not determinative of whether the court can exercise subject matter jurisdiction, and the legislation to which plaintiff vaguely refers does not support his cause of action.

2. Plaintiff's second and third claims concern his allegation that defendant City of Seattle perpetrated a fraud on the Washington state courts which prevented plaintiff from fairly presenting his case. He maintains, therefore, that he is entitled to relief from the judgment entered and affirmed by the state courts. The court concludes that plaintiff has failed to state a cause of action on which relief can be granted. Assuming that the facts are as plaintiff presents them, the court finds no indication that plaintiff was foreclosed from stating his position to

the state courts. On the contrary, plaintiff had ample opportunity to litigate his contentions. His current claims simply reflect his continuing disagreement with the state court's decision to reject those contentions.

3. Plaintiff's fourth claim is that the Washington state courts which rendered decisions in his prior cases and appeals lacked jurisdiction to do so because the activities of defendant City of Seattle which they ruled upon were null and void. As defendant points out, plaintiff is confusing the issue of whether defendant's activities were legal with the issue of the validity of judicial decisions concerning the lawfulness of those activities. Again, plaintiff has failed to state a cause of action on which relief can be granted.

4. In his fifth claim, plaintiff

asks for explanations of prior rulings by other courts. This court has no jurisdiction over the matter.

5. Plaintiff's sixth claim is simply a series of statements complaining about defendant's assertion of a counterclaim for frivolous prosecution in state court and the nefarious effect which plaintiff believes it had on the court. Plaintiff does not state any claim for which relief can be granted.

6. Plaintiff's seventh and eighth claims are clearly attempts to relitigate the same issues which he has already raised and which have been adjudicated in both state and federal courts. As such, these claims are barred by the doctrine of res judicata. Insofar as plaintiff's seventh claim raises new issues which he has not litigated before, he fails to state a claim on which relief

can be granted because he has not alleged illegalities.

7. Finally, plaintiff alleges in his ninth claim that defendant has acted arbitrarily, capriciously and with callous neglect regarding the Ballard Avenue Landmark District contrary to the National Historic Preservation Act and Seattle municipal law. Plaintiff further alleges interference with a business expectancy and with his constitutional rights regarding his real property. These allegations are so vague and nonspecific that they utterly fail to state a claim upon which relief can be granted.

Defendant's motion to dismiss is accordingly GRANTED. Plaintiff's motions for declaratory judgments are DENIED and plaintiff's motion for summary judgment noted for May 2, 1986 is STRICKEN as

moot. This action is DISMISSED with prejudice.

IT IS SO ORDERED.

The Clerk of the Court is directed to forward copies of this Order to counsel of record.

DATED at Seattle, Washington this 25th day of April, 1986.

/s/
BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANK KUSTINA,	) NO. 86-3882
	) DC# CV-86-99-R
Plaintiff-Appellant,	)
	) MEMORANDUM AND
vs.	) ORDER
	)
THE CITY OF SEATTLE,	)
	)
Defendant-Appellee.	)
	)

Appeal from the United States District Court for the Western District of Washington
District Judge Barbara J. Rothstein, Presiding

(Argued and Submitted January 8, 1987)

Before: KOELSCH, WRIGHT, and BEEZER, Circuit Judges.

At the request of plaintiff-appellant, this appeal was expedited and set for argument on the first available date. We now affirm the judgment of the district court of April 25, 1986, and direct the clerk to issue the mandate of this court forthwith. No petition for rehearing will be entertained.

IF

We find wholly without merit Kustina's first claim for declarative and injunctive relief. He sought an order requiring the city to move an old bell from the grounds of the federal government locks to some site within the Ballard Avenue Landmark District. Plaintiff failed to allege, and this court has not found, law sufficient to support such an order. The district court properly found that it had no subject matter jurisdiction. There is no substantial federal question.

Equally without merit are appellant's several claims attacking the validity of a state court judgment of dismissal. These were before this court in an earlier appeal. In a Memorandum decision of December 14, 1983, we held that the doctrine of res judicata precluded further litigation of such claims. See

Scoggin v. Schrunk, 522 F. 2d 436, 437 (9th Cir.), cert. denied, 423 U.S. 1066 (1976). Appellant had full opportunity to present his contentions to the Washington courts. We refuse to consider again his continuing disagreement with the decisions of those courts.

The district court dismissed Kustina's remaining claims for lack of jurisdiction, failure to state a claim on which relief can be granted or vagueness. The court properly denied Kustina's motion to amend his pleadings.

We have considered all of the appellant's contentions, find them without merit and affirm the judgment.

ORDINANCE 105462

AN ORDINANCE creating the Ballard Avenue Landmark District; . . ., prohibiting certain changes in buildings, structures and other visible property therein without a Certificate of Approval, . . .

Section 4. Ballard Avenue Landmark Board.

(b) The District Board shall elect its own chairman and adopt in accordance with the Administrative Code (Ordinance 102228) such rules of procedure as shall be necessary in the conduct of its business, including (i) a code of ethics, (ii) rules for reasonable notification of public hearings on applications for Certificates of Approval and applications for permits requiring Certificates of Approval in accordance with Section 5 hereof, and (iii) rules for reasonable notification of public hearings on development and design review guidelines

II A.

and amendment thereof. A majority of the currently qualified and acting members of the District Board shall constitute a quorum necessary for the purpose of transacting business. All decisions shall be made by majority vote of those members present, and in case of a tie vote, the motion shall be lost. The District Board shall keep minutes of all of its official meetings, which shall be filed with the Director.

Section 5. Approval of changes to buildings, structures and other visible property within Ballard Avenue Landmark District.

(b) All applications for a Certificate of Approval, and all applications for any permit requiring such a certificate of approval, (hereinafter both included in the words "such application") shall be submitted

to the District Board. Within thirty (30) days after receipt of each such application the District Board shall hold a public hearing thereon and by duly approved motion recommend that the same be granted, denied or be referred to the Landmarks Preservation Board. Within thirty(30) days after such referral of any such application, the Landmarks Preservation Board shall hold a public hearing thereon and recommend that the same be granted or denied.

NATIONAL HISTORIC PRESERVATION ACT OF 1966, as amended

Section 1 (Purpose of the Act)

(b) The Congress finds and declares that--

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist . .(emphasis added)

Section 2 (Declaration of policy)

It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and

individuals (emphasis added) to--

(4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means; (emphasis added)

Your Seattle Community Development

Memorandum

BLD-15/76

August 5, 1976

To: Paul E.S. Schell & J. Peter Staten

From: Earl D. Layman, HPO

Subject: Ballard Avenue Landmark District

1. (omitted)

2. As you will recall the second meeting of that afternoon was in essence a community meeting called in response to the petition which requested such a meeting for the purpose of providing community imput into the planning process in the district and particularly for a briefing on the pioneer houses. Approximately 23 persons from the community were in attendance, including the five elected members of the Board. In addition Folke Nyberg and Tom Albright, consultants for the street improvement project were there, Linda

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Aro from Neighborhood Improvement; Al Elliott and Gary Miller of HSPDA; and John Snyder and myself.

We explained to the attendees the reasons why the Board could not yet hold a formal hearing, and also explained that the Ballard Avenue Association had bowed out as sponsors of the meeting. We then proceeded to summarize actions taken in the last two months concerning the pioneer houses, as well as to the procedures involved in setting up the election for the Board. We also read the letter that we prepared for you several weeks ago to Mrs. Kustina concerning these matters. There was extensive discussion on the part of the attendees and most of them seemed satisfied with our explanations. It was evident that many of the people who signed the petition merely wanted more

detailed information as to what had been happening. Four members of the Board strongly supported the houses project, as did the consultants and other people present. It appeared to us very positively that the only strong objections came from Mrs. Helen Kustina and Mr. and Mrs. Carr, who have always been opposed to the establishment of the district, and all three of who refused to participate in the Board elections.

As a result of the above it is the strong opinion both of this office and of Historic Seattle that there is no reason why negotiations and other actions should not continue on a timely basis for the moving of the two houses into the landmark district.

EDL:hg

cc: John W. Snyder
Lawson A. Elliott
Peggy Corley